IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.(NPD-S) No.705 OF 2001

S.Dhanapal … Appellant/Petitioner

Vs.

1. A.Jerome
2. Madhu
3. The United India Insurance Co. Ltd.,
   Branch 3, Cherry Road,
   Salem – 1.

4. The Oriental Insurance Co. Ltd.,
   Branch II, Sarada College Road,
   Salem 16. … Respondents/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 05.07.2000 made in M.C.O.P.No.344 of 1995 on the file of Motor Accidents Claims Tribunal (First Additional District Judge cum Chief Judicial Magistrate), Salem.

For Appellant : M/s V. Srinivasan &
Mr.S.Kalyanaraman

For Respondents : Mr.H.Mohammed Ismail
for Mr. M.B.Gopalan for R3
Mr.S.J.Jegadev for R4
No Appearance for R1 & R2

J U D G M E N T

Aggrieved by the award of the Tribunal, dated 05.07.2000 made in M.C.O.P.No.344 of 1995 on the file of Motor Accidents Claims Tribunal (First Additional District Judge cum Chief Judicial Magistrate), Salem, the petitioner has preferred this appeal.

2. On 19.04.1993, about 8.30 a.m., when the appellant was proceeding in his Yamaha Motor Cycle bearing Registration No.TCY 1935 from his house to his factory at Meyyanoor main road, another Rajdoot Motor Cycle bearing Registration No.TNS 4409 owned by the first respondent and driven by the second respondent came in a terrific speed and hit the appellant, as a result of which, the appellant sustained severe head injuries, became unconscious and went in to deep coma. He was admitted in Apollo Hospital, Madras as inpatient for effective expert treatment for the head injuries, which were critical and serious.

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The appellant was doing business in Sago Factory, earning Rs.7,500/- per month. According to the appellant, the accident took place only due to the rash and negligent driving of the second respondent. The fourth respondent is the insurer of the motor cycle owned by the appellant. The appellant claimed Rs.2,50,000/- as compensation from all respondents.

3. The third respondent Insurance Company resisted the claim of the appellant contending that the motor-cycle was not driven rashly and negligently by the second respondent and it is the appellant, who drove the motor-cycle recklessly. They denied any insurance coverage for the vehicle bearing Registration No.TNS 4409 driven by the second respondent.

4. The fourth respondent Insurance Company also resisted the claim of the appellant, disputing the avocation and earning capacity of the appellant. They contended that the injuries sustained by the appellant is due to the rash and negligent driving of the appellant himself and therefore, they are not liable to compensate the appellant and prayed for dismissal of the claim petition.

5. On the side of the appellant, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A14 were marked. On behalf of respondents, two witnesses were examined as R.W.1 and R.W.2 and Exs.B1 to B5 were marked.

6. The Trial Court framed the following issues for consideration :

(i) Whether the accident took place on account of the rash and negligent driving of the second respondent or the petitioner herein.

(ii) Whether there is any insurance coverage for the alleged offending vehicle bearing Regn.No.TNS.4409 at the time of accident.

(iii) Whether the third respondent is liable to indemnify the first respondent, who is the owner of the Rajdoot Motor Cycle, bearing Regn. No.TNS 4409.

(iv) Whether the fourth respondent is liable to pay compensation to the petitioner.

(v) Whether the first respondent is liable to pay compensation to the petitioner.

(vi) Whether the petitioner is entitled to claim compensation as prayed for.

7. Insofar as the first issue is concerned as to whether the accident took place on account of the rash and negligent driving of the second respondent, the Tribunal held that the second respondent was responsible for the accident and awarded compensation of Rs.1,35,683/- to be paid by the owner of the vehicle.

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8. United India Insurance Company, the third respondent herein contended inter alia that there was no Insurance coverage for the offending vehicle bearing Registration No.TNS 4409 driven by the second respondent. The Tribunal held that the third respondent namely, United India Insurance Company is not liable to pay compensation.

9. Ex.A10 is the Policy taken by the appellant for his motor-cycle bearing Registration No.TCY 1935. R.W.2-Senior Assistant in the Oriental Insurance Company, the fourth respondent herein deposed that the appellant, the owner of the vehicle bearing Registration No.TCY 1935 has not chosen to pay additional premium to cover the accident to the owner of the vehicle also. The existing Comprehensive Policy covering the period of accident was only for two-wheeler and not to compensate the loss due to the death/injury caused to the owner. It covers loss or damage to the motor-cycle by fire and explosion, theft, riot and strike, etc. and it does not cover any injury caused to the owner of the vehicle in the accident. Therefore, the Tribunal held that the Comprehensive Policy did not cover the liability to pay compensation for the death/bodily injury to the owner of the vehicle and therefore, held the insurer viz., the fourth respondent is not liable to pay any compensation.

10. The question to be decided is as to whether in the absence of coverage against third party by the offending vehicle, whether the owner of the vehicle, who has taken a Comprehensive Policy, and who is not at fault, can seek compensation as against his insurer.

Heard both sides.

11. Learned Counsel for the appellant submitted that the Tribunal erred in holding that the fourth respondent is not liable to pay compensation, particularly when the appellant had taken a Comprehensive Policy under Ex.A10, in respect of motor-cycle bearing Registration No.TCY 1935. He further submitted that the Tribunal has erred in holding that the fourth respondent is not liable to pay compensation on the ground that additional premium has not been paid to cover the owner of the vehicle. Placing reliance on the decision rendered by the Consumer Redressal Forum, Chennai, learned Counsel submitted that the word 'driver' in the Insurance Policy would also cover the 'owner cum driver' and therefore, he is entitled to a compensation of Rs.20,000/-. The said clause in the Policy is extracted hereunder :

> "It is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided for fatal injury/death as hereinafter defined sustained by driver (other than paid driver) of the vehicle in direct connection with the use of Motor Vehicles or whilst mounting or dismounting or driving the vehicle and caused by violent accidental external and visible means which independently of any other cause shall within 12 calendar months of the occurrence of such injury result in :

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(a) Death only
(b) Total irrecoverable loss of :

(i) Sight of both eyes of the actual loss by physical separation of the two entire hands or two entire feet or of one entire hand, and one entire foot, or of such loss of sight and loss of one entire foot or one entire hand

(ii) Use of two hands or two feet or of one hand and of one foot, or of such loss of sight or one eye and such loss of use of one hand or one foot.

(c) Total irrecoverable loss of :

(i) The sight of one eye or of the actual loss by physical separation of the entire hand or one entire foot

(ii) Use of hand or a foot without physical separation

12. Learned Counsel for the appellant also invited my attention to the provisions of the said Clause, wherein it is stated that in respect of the injury, the liability of the Company shall not exceed Rs.20,000/-. He submitted that a owner, who is the driver of the vehicle has to be treated as a "driver", other than the "paid driver" and therefore, the Insurance Company is liable to compensate to an extent of Rs.20,000/-.

13.Per contra, learned Counsel for the fourth respondent, Oriental Insurance Company, contended that the liability of the Insurance Company and the premium required to be paid are mentioned in the first page of the Policy itself. He submitted that the Policy does not cover the owner, who happens to be the driver of the vehicle. He also submitted that the coverage is only in respect of (i) loss or damage to the vehicle (ii) liability to third parties. He further submitted that if the owner of the vehicle has to be brought under the coverage, additional premium has to be paid to the Company and that sufficient endorsement has to be made in the Policy to compensate the insured in the event of death/injury.

He also submitted that the Motor Vehicles Act contemplates different meanings to the word 'driver' and to the 'owner' of the vehicle.

The decision cited by the Counsel for the appellant is not applicable in view of the specific pronouncement of the Supreme Court on the issue as to whether the Insurance Company is liable to compensate the owner in the case of bodily injury or death.

14.The definition of the word 'driver' does not include the 'owner cum driver' of the vehicle. If there is a bodily injury or death of a 'owner' cum driver' and if the Company has to compensate, then there is no necessity to seek additional premium to the Policy. The mere fact that additional premium is required to be paid to the Company, for the

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'owner' means that, he cannot be brought under clause I of the Policy, i.e, which gives coverage to the extent of Rs.20,000/-.

15. Learned Counsel for the third respondent placing reliance on a decision reported in 2005 ACJ 1 (Dhanraj vs. New India Assurance Co. Ltd. and another), submitted that the even in the case of comprehensive Policy, Section 147 does not require the Insurance Company to assume risk for death or bodily injury to the owner of the vehicle. He further submitted that if the Policy does not cover any risk for the injury to the owner, then the Insurance Company has no liability to compensate the owner. Paragraphs 9 and 10 of the decision are extracted herein:

> "9. In the case of Oriental Insurance Co. Ltd., vs. Sunita Rathi, 1998 ACJ 121 (SC) it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured, i.e., an owner of the vehicle has no liability to a third party the insurance company has no liability also.
>
> 10.In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4,989 paid under the heading 'own damage' is for covering liability towards personal injury. Under the heading 'own damage', the words 'premium on vehicle and non-electrical accessories' appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance. "

16. (i) In Minu B.Mehta vs. Balakrishnan in 1977 ACJ 118, the Supreme Court had an occasion to examine the provisions of Section 95 corresponding to Section 147 of the Insurance Act. It observed as follows :

> "The Insurance Policy is only to cover the liability of a person, which he might have incurred in respect of death or bodily injury". The accident to which the owner or a person injured is liable to the extent of liability in respect of death or bodily injury and that liability is covered by the Insurance Company. It is therefore, obvious that if the owner is not inclined in his liability in respect of death or bodily injury to any person, there is no liability and it is not intended to be covered by the Insurance Company. The liability contemplated arises under the law of negligence and under the principle of vicarious liability. The provision do not make the owner or the Insurance Company liable for any bodily injury caused to a third party arising out of the use of the vehicle, unless the liability can be fastened on him. It is significant to note that under such sub-clause(1) of Section 95 (1) (d) of the Act, the policy of Insurance must

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insure a person against the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle. Under Section 95(i)(b), sub clause (i) of the Act, the liability of the person with bodily injury is caused by or use of the vehicle in a public place. So far as the bodily injury caused to a person is concerned, it need not be due to any act or liability incurred by the person. It may be noted that when the provisions of Section 95 are similar to Section 36(i) of the Act. The relevant portion of which is to the effect that the Policy of Insurance must be a policy which insures a person in respect of any liability, which may be incurred by him in respect of death or bodily injury of any person caused by or arising out of the use of the vehicle on road. The expression liability which may be incurred by him is covered under the liability arising out of the use of the vehicle. It has to be seen that the person must be under the liability and the liability is covered by the Insurance Policy. "

(ii) In United India Insurance Company Ltd., vs. Lakshmi, reported in 1990 ACJ 390, this Court had an occasion to consider a case of an accident between tractors, due to the negligence of the driver of one tractor and the owner of the other. A Division Bench of this Court held that as far as the death of the owner is concerned, there is no liability on the part of the Insurance Company to pay any compensation, since third party liability is involved and the Policy covers only the liability of the insurer to a third party.

(iii) In United India Insurance Ltd., vs. Darshan Gaur and others reported in 2001 ACJ 998, the High Court of Punjab and Haryana at Chandigarh considered whether the Insurance Company is liable for the death of the owner of the tractor, travelling in a vehicle. The Tribunal directed the Insurance Company to pay Rs.50,000/- to the claimants under no fault liability. The matter was taken on revision by the Company. In paragraph 9 of the judgment, the Court held as follows :

"Suffice it to say the very head 'No fault liability' suggests that at the stage of awarding under this head, it is not to be seen whether the driver of the offending vehicle was at fault or the victim was at fault. Under the head 'No fault liability' compensation has to be awarded irrespective of the fact whether the victim was at fault or the driver of the offending vehicle was at fault. In this case, the question is whether the Insurance Company was liable for the death of the insured himself. The Insurance Company is liable to indemnify the third party on behalf of the insured. In case, the insured himself meets with an accident and dies, the risk is not covered by the Insurance Policy. The liability of the Insurance Company is to compensate the insured towards risk of third party and to satisfy the judgment and award passed against him.

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(iv) In New India Assurance Company Limited, vs. Kaliathal and others reported in 2002 ACJ 1035, this Court considered as to whether the legal representatives of the owner of a truck, who was killed by the driver of the said vehicle is entitled to compensation. In paragraph 8 of the judgment, it is held as follows :

> "8. ... the words 'incurred by him' under Section 147 of the Insurance Act refers to the insured. Therefore, the insurer is liable to indemnify the liability of the owner. Any contract of indemnity would last till the lifetime of either of the contracting parties. With the death of the owner, the policy comes to an end and, therefore, the insurance company is not liable to compensate for the loss sustained by the third person when the owner dies. Thus, when the insured is dead, then the question of indemnifying liability of the deceased insured does not arise. Therefore, the liability does not extend to the heirs of the deceased. It would thus appear that even in case of third party's claim, once the insured dies in the same accident, the third party does not have a claim against the insurance company, because the liability of the owner ceases."

(v) In Dr.S.Jayaram Shetty vs. National Insurance Company Ltd. reported in 2002 ACJ 2054, a Division Bench of the Karnataka High Court considered the question as to whether the owner-insured, who sustained injuries in an accident, when the car driven by his driver dashed against a roadside tree is eligible to get compensation. In paragraphs 8 and 10, it is held as follows :

> "8. The term 'third party' has not been defined exhaustively in the Act. Section 145(g) gives an inclusive definition and simply states that 'third party' will include the Government. That does not, however, present much difficulty, in understanding the true meaning and import of the term. The term 'third party' must necessarily refer to a party other than those, who are parties to the contract of insurance. For a contract of insurance, the insurer is one party while the policy holder is the other party. Any person or persons other than the said two party or parties would necessarily be referred referred to as the third parties. That is precisely how the expression third party appearing in Chapter XI has to be understood. Considerable support for that view is available from the meaning given to the words 'third party risks' in Stroud's Judicial Dictionary, which explains third party risks in the following words :
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> "Third party risks - Road Traffic Act, 1930 (c.43), (s.35), Road Traffic Act, 1972 (c.20), (s.143) connotes that the insurer is one party to the contract, that the policy holder is another party, and that the claims made by others in respect of the negligent use of the car may

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be naturally described as claims by third parties [Digby vs. General Accident Fire & Life Assurance Corporation, (1943) AC 121]".

17. The argument that the insured owner of a motor vehicle involved in a motor accident can also claim to be a third party must, therefore, be rejected on first principles alone.

The view expressed by the learned Single Judge in New India Assurance Company Limited, vs. Kaliathal and others reported in 2002 ACJ 1035 was confirmed by a Division Bench of this Court in 2004 ACJ 51 (Kaliathal and others vs. New India Assurance Co. Ltd. And another), in which this Court has held as follows :

"3. A Division Bench of this Court in L.P.A.No.187 of 1999, decided on 26.07.2000, has held that the main purpose of the policy is to indemnify the insured against loss or damage arising out of the use of the motor vehicle owned by the insured; that the policies issued for motor vehicles are not the same as policies of life insurance and that the policy is meant to cover the liabilities arising out of the use of the motor vehicles insofar as the liabilities of the owner are concerned and the owner cannot claim to be treated as third party by becoming a passenger of his own vehicle."

18.The decision of the Apex Court reported in 2005 ACJ 1 (Dhanraj vs. New India Assurance Co. Ltd. and and another) squarely applies to the facts of this case. Inasmuch as additional premium has not been paid to cover the appellant under the Policy, he is not entitled to claim any compensation from the Insurance Company and that the award has to be proceeded only as against the insured.

In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

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Sd/-
Assistant Registrar,

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Sub Assistant Registrar.

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To

1. (First Additional District Judge cum
Chief Judicial Magistrate),
The Motor Accidents Claims Tribunal Salem.

2. The Section Officer,
V.R.Section, High Court of Madras, Chennai.

+ One cc to Mr. V. Srinivasan Adovocate SR 5317

+ One cc to zmr. S. Jagadev Advocate SR 5787
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